IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1463 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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G S R T C - Appellant(s)
Versus
SANDIPSINH L MAHARAUL & 1 - Defendant(s)

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Appearance :

MR HEMANT S SHAH for Appellant(s) : 1,
MR CHIRAG PATEL for MR BS PATEL for Defendant(s) : 1,
MRS RANJAN B PATEL for Defendant(s) : 1,
MR TH SOMPURA for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 20/11/2006

ORAL JUDGMENT

The Gujarat State Road Transport Corporation has filed this appeal to challenge judgment and award made by the Motor Accident Claims

Tribunal [Special], Vadodara, dated 4th May, 1994 in M.A.C. Petition No. 348 of 1988. By the said award the Tribunal has granted compensation to respondent no. 1 [hereinafter referred to as 'the claimant'] of Rs.91,500/- for the bodily injuries sustained by him in a vehicular accident which took place on 5th May, 1985. The claimant, on the relevant day, was travelling in a bus belonging to the appellant bearing Registration No. GRR 8909. He was going from Sankheda to Handod. When the bus reached the bridge on a river Uchchha, the driver i.e., respondent no. 2 of this appeal, who has expired and has been deleted from the proceedings, lost the control over the vehicle. As a result of this, the vehicle dashed with a tree. The claimant who was passenger in the bus, received injuries. It is his say that the bus was being driven by the driver at an excessive speed and with a view to save some cattle, he applied brake and thereafter lost control over it. The say of the claimant was that because of the accident, he sustained fracture of the right thigh bone and he had to be hospitalized for treatment. He has stated that he remained in the hospital for one and half months and he has now suffered disability to the extent of 25%. According to the claimant, at the time of accident, he was studying in Petrofills Technology and because of the injuries suffered in the accident, he had to leave the study. On these averments, the claimant at first instance, claimed Rs.42,000/- but subsequently enhanced the claim to Rs.1,00,000/-.

2. The Tribunal, on the basis of the material produced before it,

arrived at the conclusion that the claimant suffered injuries on account of rash and negligent act of the driver of the bus. It also came to the conclusion that the claimant had suffered permanent disability of 12.5%. On the basis of such finding, the Tribunal awarded various amounts under different heads, details of which have been incorporated in paragraph 6 of the judgment. Thus, in-all the Tribunal awarded a sum of Rs.91,500/- to the claimant. It is this award which is now under challenge.

3. I have heard Mr. Hemant S Shah, learned advocate for the appellant and Mr. Chirag B Patel, learned advocate appearing for the claimant. Mr. Shah has taken me through the record of this appeal. He has submitted that the award of the Tribunal is exorbitant and it is required to be curtailed substantially. He has further submitted that the certificate of disability has been introduced subsequently without the knowledge of the appellant and, therefore, the Tribunal ought not to have relied on the same. He has also submitted that considering the tampering of evidence and in particular the disability certificate, the case is required to be remanded to the Tribunal for re-trial.

3.1. As against that, Mr. Patel has tried to support the judgment. According to Mr. Patel, apart from the disability certificate, there is enough other material including the medical certificate of the S.S.G. Hospital and Dr. Mukund B Patel to show that the claimant sustained serious injuries and the

amount awarded by the Tribunal was just and fair. He has, therefore, prayed for dismissal of the appeal.

4. I have closely perused the record of this appeal and particularly with a view to appreciate submission raised by Mr. Shah with regard to tampering with the evidence. Disability certificate is at Exh. 24. It is issued by Dr. Krishnakant N Patel of Parth Orthopaedic Centre. It is purported to have been produced along with list Exh. 5. The list does not bear the date. However, the endorsement made by the advocate for the opponent giving no objection is dated 9th February, 1994. So far the disability certificate is concerned, it is at item no. 2. However, it is apparent that item no. 2 has been added subsequently since the ink is totally different. The cause title as well as the serial no. 1, description of documents, date, etc., are in black ink; whereas item no. 2 and the words 'Medical certificate of Dr. Krushnakant' are written in blue ink. The signature of the learned advocate is also in black ink. It may also be noted that the learned advocate appearing for the claimant has drawn a line with black ink to cover the blank area in the list and the words of item no. 2 clearly appear that they have been inserted subsequently. Further the disability certificate at Exh. 24 shows that the date has been scored off deliberately with a view to see that no stress could be had of the date on which it was prepared. The next document is a Pursis. It appears that originally it was Exh. 24, but with the surreptitious introduction of Exh. 24, the medical certificate, on Pursis

the figure of 24 clearly appears to have been converted to 23. Similarly in the proceedings of the Court i.e., Rojkam also tampering appears to have been done to accommodate Exh. 24. In view of all these doubtful circumstances, the submission of Mr. Shah deserves acceptance. It clearly appears that somebody has tampered with the record of the case and has surreptitiously brought on record the disability certificate. When this is the position, I am of the strong opinion that such dishonesty cannot be allowed to exist. The certificate with regard to disability at Exh. 24 is, therefore, required to be deleted and it is hereby ordered to be deleted from the proceedings.

5. So far the quantum of the award is concerned, the Tribunal has awarded a sum of Rs.45,000/- for future loss of income and it has been assessed on the basis of income of Rs.2,000/- per month multiplied by 12.5% i.e., the permanent disability purported to have been suffered by the claimant with multiplier of 15, comes to a sum of Rs.45,000/-. The future loss of income is decided mainly on the alleged disability certificate. When the said certificate is deleted from the record, nothing remains to prove the disability. In these circumstances, even the oral evidence of the claimant cannot be accepted because it has become doubtful. The Tribunal has awarded Rs.45,000/- under the head of future loss of income. In my opinion, the same cannot be awarded because there is no evidence with regard to future loss of income.

5.1. So far other heads are concerned, Mr. Shah has drawn my attention to the amount awarded under the head of pain, shock and suffering. It is Rs.20,000/-. The record shows that the claimant had suffered certain injuries including fracture of right femur, for which he was hospitalized and operated upon. However, considering all these facts also, it appears that the Tribunal has awarded exorbitant amount. The claimant has deposed that he has suffered shortening of leg. However, in absence of any cogent evidence on that, it is difficult for tis Court to agree to the request of the claimant. In view of the same, in my opinion, the just amount could be Rs.15,000/-. The rest of the amounts awarded under different heads are not required to be interferred with. Hence, this appeal is partly allowed. The compensation awarded by the Tribunal is Rs.91,500/- and now the claimant will be entitled to receive Rs.41,500/-. The Tribunal is, therefore, directed to see that the claimant is paid compensation in accordance with the compensation determined by this Court. The appeal is partly allowed with no order as to costs. The excess amount is ordered to be refunded to the appellant.

[Akshay H Mehta, J.]

* Pansala.